IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4560 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DESAI KARMANBHAI SHIVABHAI & 2 - Petitioner(s)
Versus
MANIBEN WD/O KESHAVLAL J PANDYA & 3 - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1 - 3.
MR VG DAVE for Respondent(s) : 1 - 3.
MR LR PUJARI, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/04/2007

ORAL JUDGMENT

1. Shri B.G. Jani, learned counsel for the petitioners; Shri V.G.Dave, learned counsel for the respondents no. 1 to 3; Shri L.R.Pujari,

learned AGP for the respondent no.4.

2. Respondent no.1 has died somewhere in the year 1997, while respondent no.2 has died on 4.11.03. Shri Jani, learned counsel for the petitioners submits that on 18.1.07, he wrote a letter to the petitioners to immediately send instructions, instead of instructions from the petitioner, he received a letter from the local lawyer that the respondents no. 1 and 2 have died in 1997 and 2003 respectively. Along with the said letter, Shri Jani received death certificates also. It appears that the petitioner, who came to know about the matter and about the death of the respondents did not bother to come to this Court for making necessary application/applications for substitution of the legal representatives and an application to explain the delay. Even after 11.3.07 till date, no application for substitution has been filed. Shri Jani, learned counsel for the petitioner submits that if some time is given to him, he would file necessary application.

3. In the opinion of this Court, when two of the respondents have already died and fact was known to the petitioner and instead of making an application, they simply sent instructions to the lawyer, then, no further indulgence is required to be shown. In absence of the legal representatives of the respondents no. 1 and 2, the matter cannot be proceeded with. The

petition deserves to and is accordingly dismissed. Interim relief, if any, is vacated.

4. It is, however, made clear that if law permits the petitioner to substitute legal representatives, file applications to explain the delay and restoration of the matter, then, they would certainly be entitled to file such application. Rule is discharged. No costs. Interim relief, if any is vacated.

[R.S. GARG, J.]

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